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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

UNITED STATES POSTAL SERVICE, et al.,

Defendants.

CLEANAIRNOW, et al.,

Plaintiffs,

v.

LOUIS DEJOY, et al.,

Defendants.

Case Nos. 3:22-cv-02583
3:22-cv-02576

**JOINT CASE MANAGEMENT
STATEMENT**

Honorable Araceli Martínez-Olguín

JOINT CASE MANAGEMENT STATEMENT

Pursuant to the orders reassigning these cases (Case No. 3:22-cv-02583 (*State*) Dkt. 126; Case No. 3:22-cv-02576 (*CleanAirNow*) Dkt. 66), the parties in these related cases submit the following case management statement.

1. Jurisdiction and Service

Plaintiffs contend that this Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the laws of the United States), 28 U.S.C. § 1346 (civil action against the United States), 39 U.S.C. § 401 (authorizing suits against the Postal Service), and 39 U.S.C. § 409 (suits by and against the Postal Service).

Defendants (collectively, the Postal Service) reserve the right to argue that the Court lacks subject matter jurisdiction over one or more of Plaintiffs' claims, including on standing grounds.

The Postal Service was served.

2. Facts

These cases challenge the Postal Service's record of decision (ROD) for the Next Generation Delivery Vehicle (NGDV) Acquisitions program, which approved the purchase of 50,000 to 165,000 NGDVs. Plaintiffs allege that the final environmental impact statement (EIS) supporting the ROD did not comply with the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq.

On January 7, 2022, the Postal Service released a final EIS, which evaluated, among other alternatives, its preferred alternative of procuring "up to 90 percent [internal combustion engine] NGDV with at least 10 percent [battery electric] NGDV." Final EIS iii; *see* 87 Fed. Reg. 994 (Jan. 7, 2022). On February 23, 2022, the Postal Service signed the ROD, which finalized its decision to implement the preferred alternative. *See* 87 Fed. Reg. 14,588 (Mar. 15, 2022).

On April 28, 2022, Plaintiffs CleanAirNow, et al. filed a complaint challenging the ROD. *CleanAirNow* Dkt. 1. Also on April 28, 2022, Plaintiffs State of California, et al. filed a complaint challenging the ROD, and filed a first amended complaint on June 10, 2022. *State* Dkts. 1, 79. Plaintiffs' complaints alleged that the Postal Service violated NEPA by, *inter alia*: (1) making "an irreversible and irretrievable commitment of resources" before completing the NEPA process; (2)

1 failing to consider and evaluate reasonable alternatives including vehicle fleets with a larger mix
 2 of electric vehicles; (3) failing to take a “hard look” at these alternatives, including their impacts
 3 on air quality, environmental justice, and climate harms; (4) relying on unfounded assumptions
 4 regarding the costs and performance of electric vehicles, infrastructure, and gas prices; and (5)
 5 failing to consider inconsistencies of its preferred alternative with the States’ laws and policies.
 6 *State* ECF No. 1; *CleanAirNow* ECF No. 1. The cases were related on May 10, 2022. *State* Dkt. 27;
 7 *CleanAirNow* Dkt. 10.

8 Postal Service update: The Postal Service is currently developing a supplemental EIS
 9 (SEIS) to evaluate the environmental impacts of significant changes to the NGDV Acquisitions
 10 program. 87 Fed. Reg. 43,561 (July 21, 2022). The Postal Service anticipates that it will
 11 “significantly modify[]” the program to increase the percentage of battery electric NGDVs to “not
 12 less than 50 percent.” *Id.* at 43,561. The Postal Service has solicited public comments on the scope
 13 of the SEIS and it will solicit a second round of public comments on a draft of the SEIS. *Id.* The
 14 Postal Service currently anticipates releasing the draft SEIS on June 30, 2023, and finalizing the
 15 SEIS and issuing a revised ROD in October 2023. *State* Dkt. 125 at 2; *CleanAirNow* Dkt. 65 at 2.

16 The Postal Service anticipates that it will begin to receive the first NGDVs in June 2024.
 17 *State* Dkt. 125 at 2; *CleanAirNow* Dkt. 65 at 2.

18 In addition, the Postal Service recently announced that its delivery vehicle electrification
 19 strategy includes contracts for 9,250 off-the-shelf electric vehicles, 9,250 off-the-shelf gas vehicles,
 20 and more than 14,000 charging stations. U.S. Postal Serv., *USPS Moves Forward with Awards to*
 21 *Modernize and Electrify the Nation’s Largest Federal Fleet* (Feb. 28, 2023),
 22 [https://about.usps.com/newsroom/national-releases/2023/0228-usps-moves-forward-with-awards-](https://about.usps.com/newsroom/national-releases/2023/0228-usps-moves-forward-with-awards-to-modernize-and-electrify-nations-largest-federal-fleet.htm)
 23 [to-modernize-and-electrify-nations-largest-federal-fleet.htm](https://about.usps.com/newsroom/national-releases/2023/0228-usps-moves-forward-with-awards-to-modernize-and-electrify-nations-largest-federal-fleet.htm). The announcement stated that
 24 “delivery of the vehicles is intended to commence in December of this year, assuming successful
 25 completion of the [SEIS] . . . , and the related issuance of our [revised ROD] pursuant to [NEPA],”
 26 and that “[a]ll awards in today’s announcement are contingent on the Postal Service’s satisfactory
 27 completion of [NEPA] requirements.” *Id.* Plaintiffs note below that the Postal Service “did not
 28

disclose or study” the contracts “in the final EIS” for the NGDV Acquisitions program. That is because the contracts postdate and are distinct from the final EIS and ROD for the NGDV Acquisitions program. Rather, as the announcement explained, the contracts would be subject to the revised ROD with their NEPA analysis to occur in the SEIS.

Plaintiffs’ update: On February 28, 2023, in addition to proceeding with its NGDV Acquisitions program, the Postal Service announced a new contract for the purchase of 18,500 off-the-shelf vehicles, including 9,250 gas-powered vehicles. U.S. Postal Serv., <https://about.usps.com/newsroom/national-releases/2023/0228-usps-moves-forward-with-awards-to-modernize-and-electrify-nations-largest-federal-fleet.htm>. The Postal Service did not disclose or study this alternative in the final EIS. Delivery of the off-the-shelf vehicles pursuant to the new contract is expected to commence in December 2023, two months after the expected October 2023 publication of the final SEIS and issuance of the revised ROD.

3. Legal Issues

Plaintiffs allege that the Postal Service’s issuance of the final EIS and ROD was arbitrary and capricious, did not demonstrate reasoned decision-making, exceeded the Postal Service’s statutory authority, and was contrary to the requirements of NEPA and NEPA’s implementing regulations.

The Postal Service disputes these claims.

4. Motions

There are no pending motions. The motions below that have been decided provide additional background on the procedural history of the case.

Oshkosh Defense, LLC filed motions for leave to intervene as a defendant in the cases. *State* Dkt. 82; *CleanAirNow* Dkt. 35. The Court granted those motions. *State* Dkt. 122; *CleanAirNow* Dkt. 64.

On August 1, 2022, before the Postal Service filed answers to Plaintiffs’ complaints, the Court sua sponte stayed proceedings due to the Postal Service’s then-pending motion to consolidate all challenges to the ROD before a multidistrict litigation court. *State* Dkt. 103; *CleanAirNow* Dkt.

1 49. On October 7, 2022, the Judicial Panel on Multidistrict Litigation denied the Postal Service's
2 consolidation motion.

3 On February 2, 2023, the Court granted the Postal Service's motions to extend the litigation
4 stays and denied Plaintiffs' motions to lift the litigation stays. *State* Dkt. 121; *CleanAirNow* Dkt.
5 63. The Court wrote that the "USPS expects to finalize the supplemental environmental review in
6 August 2023, and to issue the revised record of decision by October 2023." *State* Dkt. 121 at 2;
7 *CleanAirNow* Dkt. 63 at 2. The Court explained that "[i]n light of the supplemental NEPA review,
8 litigating the current one makes little sense from a judicial resources point of view." *State* Dkt. 121
9 at 2; *CleanAirNow* Dkt. 63 at 2. The Court also stated "[i]f it turns out that USPS cannot meet the
10 August 2023 deadline, plaintiffs may ask the Court to revisit the stays." *State* Dkt. 121 at 2;
11 *CleanAirNow* Dkt. 63 at 2. Plaintiffs may ask the Court to revisit the stay because the Postal Service
12 has stated that it will not finalize the SEIS by August 2023, and because after the court granted an
13 extension of the stay, the Postal Service proceeded with a new contract for off-the-shelf vehicles
14 that has not been evaluated under NEPA.

15 The Court directed the parties to file joint status reports every 90 days. *State* Dkt. 121 at 3;
16 *CleanAirNow* Dkt. 63 at 3. On May 1, 2023, the parties filed the first joint status report. *State* Dkt.
17 125; *CleanAirNow* Dkt. 65.

18 At a December 1, 2022 hearing on the stay motions, the Court indicated that it would
19 consolidate the cases and that Plaintiffs should "plan on filing a consolidated complaint" if they
20 seek to challenge the revised ROD. *State* Dkt. 114 at 4, 15. The Court has not yet consolidated the
21 cases.

22 If Plaintiffs file an amended complaint challenging the revised ROD, the parties anticipate
23 that the cases would be resolved through cross-motions for summary judgment after the Postal
24 Service files an answer and serves the administrative record.

25 5. Amended Pleadings

26 Plaintiffs may amend their complaints based on the SEIS.
27
28

1 6. Evidence Preservation

2 The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored
3 Information (“ESI Guidelines”) regarding reasonable and proportionate steps taken to preserve
4 evidence relevant to the issues reasonably evident in this action. *See* ESI Guidelines 2.01, 2.02;
5 Checklist for ESI Meet and Confer. In this matter, such preservation is limited to that necessary to
6 prepare and file the administrative record.

7 7. Disclosures

8 Evidentiary disclosures are not required in administrative record review cases, and none are
9 anticipated. Fed. R. Civ. P. 26(a)(1)(B)(i).

10 8. Discovery

11 The parties anticipate that this action will be resolved based on the Postal Service’s
12 administrative record and that discovery will not be necessary.

13 9. Class Actions

14 This case is not a class action.

15 10. Related Cases

16 The Court has related these cases. In addition, there is a challenge to the same Postal Service
17 ROD pending in another court. *See Natural Res. Def. Council v. DeJoy*, No. 1:22-cv-3442
18 (S.D.N.Y.). That action has also been stayed with the parties directed to file a joint status letter by
19 July 10, 2023 on the Postal Service’s SEIS. Order, *Natural Res. Def. Council v. DeJoy*, No. 1:22-
20 cv-3442 (S.D.N.Y. Jan. 18, 2022), Dkt. 67.

21 11. Relief

22 The *CleanAirNow* Plaintiffs ask the Court to: (1) declare that the Postal Service violated
23 NEPA and its implementing regulations in issuing its final EIS and ROD; (2) vacate the Postal
24 Service’s final EIS and ROD until the Postal Service has demonstrated lawful compliance with
25 NEPA and applicable regulations; (3) issue an order enjoining the Postal Service from any action
26 under its NGDV Acquisitions program until the Postal Service has demonstrated lawful NEPA
27 compliance; (4) award Plaintiffs their costs, expenses, and reasonable attorneys’ fees; and (5)
28

1 provide for such other relief as the Court deems just and appropriate.

2 The *State* Plaintiffs request that the Court: (1) issue a declaratory judgment that the Postal
3 Service violated NEPA in issuing the Final EIS and ROD; (2) issue an order vacating and setting
4 aside the final EIS and ROD unless and until the Postal Service complies with applicable law; (3)
5 issue an order enjoining action by the Postal Service under its NGDV Acquisitions program until
6 it has complied with NEPA; (4) award Plaintiffs their costs, expenses, and reasonable attorneys'
7 fees; and (5) award such other relief as the Court deems just and proper.

8 The Postal Service disputes Plaintiffs' entitlement to any relief in these cases and therefore
9 opposes the relief sought.

10 12. Settlement and ADR

11 The parties have complied with ADR L.R. 3-5. Plaintiffs do not believe that ADR would be
12 productive at this time. The Postal Service believes that ADR could be useful to achieving a
13 resolution of these lawsuits.

14 13. Consent to Magistrate Judge for all Purposes

15 All parties do not consent to have a magistrate judge conduct all further proceedings.

16 14. Other References

17 Plaintiffs do not believe that this case is suitable for reference to binding arbitration, special
18 master, or the Judicial Panel on Multidistrict Litigation.

19 The Postal Service agrees that the case is not suitable for reference to binding arbitration or
20 a special master. As discussed above, the Judicial Panel on Multidistrict Litigation denied the Postal
21 Service's motion to consolidate these cases with other cases challenging the same Postal Service
22 action.

23 15. Narrowing of Issues

24 The parties do not believe that it is possible to narrow the issues at this time.

25 16. Expedited Trial Procedure

26 Because judicial review in this case is based on the Postal Service's administrative record,
27 the cases should be decided on summary judgment and no trial is expected to occur.
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17. Scheduling

Plaintiffs propose that if they move to lift the stay and are successful, they will likely seek an expedited briefing schedule in light of the Postal Service's announcement that delivery of off-the-shelf vehicles "is intended to commence in December of this year." U.S. Postal Serv., <https://about.usps.com/newsroom/national-releases/2023/0228-usps-moves-forward-with-awards-to-modernize-and-electrify-nations-largest-federal-fleet.htm>. The Postal Service will propose a schedule for any future proceeding if and when the litigation stays are dissolved. As discussed above, the Postal Service currently expects to issue the revised ROD in October 2023.

18. Trial

A trial is not anticipated in this administrative record case. The parties anticipate that summary judgment motions would require a hearing of two to four hours.

19. Disclosure of Non-Party Interested Entities or Persons

All required disclosure statements have been filed.

20. Professional Conduct

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

Dated: May 31, 2023

Respectfully submitted,

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1

I hereby certify that the above counsel in Case Nos. 3:22-cv-02583 and 3:22-cv-02576 have concurred in the filing of this document.

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CERTIFICATE OF SERVICE

I hereby certify that, on May 31, 2023, I electronically filed the foregoing document with the Clerk of the Court using the ECF System, which will send notification of such filing to all counsel of record by operation of the Court's ECF System.

/s/ Timothy S. Bishop
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